

Monday, 16 September, 1946

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan.

PROCEEDINGS IN CHAMBERS

Paper No. 418 - Application on behalf of the
Prosecution under Rule 6(b)(1) pertaining to
IPS Document No. 9016-B.

Paper No. 428 - Request for production of Wit-
nesses.

Paper No. 430- Application on behalf of the
Prosecution for leave to withdraw its document
No. 1906, "Correspondence American Embassy,
Nanking 1938, Volume IX."

Before:

HON. SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth
of Australia.

Reported by:

Julian Wolf
Official Court Reporter
IMTFE

Appearances:

For the Prosecution Section:

BRIGADIER R. H. QUILLIAM, Associate
Counsel, acting on behalf of
New Zealand

MR. SOLIS HORWITZ
MR. DAVID N. SUTTON

For the Defense Section:

MR. WILLIAM LOGAN, JR., Counsel for the
Accused, KIDO, Koichi
MAJOR BEN BRUCE BLAKENEY, Counsel for
the Accused, UMEZU, Yoshijiro

For the Office of the General Secretary, IMTFE

MR. C. A. MANTZ,
Clerk of the Court
MR. H. W. DELANEY
Deputy Clerk of the Court

The Proceedings were begun at 0900.

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THE PRESIDENT: First, we will take the Application for the production of witnesses by UMEZU, Yoshijiro. In addition to the information given here we should have something to indicate that these witnesses that you wish called will be able to give some relevant and material facts. It should not be difficult to establish in these cases that these are also soldiers -- high ranking soldiers. What is the attitude of the prosecution?

MR. HORWITZ: The prosecution has no objection on the Application.

THE PRESIDENT: I suppose you consider him capable of giving relevant and material evidence, Mr. Horwitz?

MR. HORWITZ: Well, our attitude is that if the defense feels these men are needed for their defense they can determine that.

THE PRESIDENT: At one stage or other you may have to consider the question of relevancy and materiality, but I do not think we have reached that stage yet. They are calling these witnesses, I take it, not merely for the sake of calling witnesses

but they really think they would be able to give us some assistance. Well, this order will be as prayed.

Does Mr. Logan know of these matters?

CLERK OF THE COURT: No, he is interested, I believe, relevant to the matter of the waiver of 6(b)(1), so I will proceed then to the withdrawal of exhibits.

THE PRESIDENT: This is an Application by the prosecution to withdraw exhibit No. 328, "Correspondence American Embassy, Nanking 1938, Volume IX."

What is the reason for this Application?

MR. SUTTON: This is the original volume from the American Embassy at Nanking, and portions thereof were processed for the prosecution at the request of the defendant. Such parts as they wanted therefrom have been processed and delivered to the defendant and the American Embassy at Nanking is insisting that we get this volume back to them as early as possible as it is their original volume and has a great amount of correspondence which is not at all pertinent to this case. It is just the year's correspondence -- 1938 correspondence -- from the American Embassy at Nanking.

THE PRESIDENT: Why do they want it back so soon? They are not using it, are they?

MR. SUTTON: Yes. They state they have occasion to refer to it from time to time because of the nature of the correspondence. It has all of the correspondence of that year on various subjects that passed through the Embassy. It does not just apply to the --.

THE PRESIDENT: Well, they want it because they need it, not because they do not trust us to keep it.

MR. SUTTON: Because they need it, sir.

THE PRESIDENT: There is no objection by the defense, but there is nobody representing all of the defendants here. It can be obtained again, if necessary?

MR. SUTTON: Yes.

MR. LOGAN: No objection.

THE PRESIDENT: Yes. I make the order for the return of the volume to the American Embassy at Nanking.

Now, the next matter is an Application by the prosecution under Rule 6(1)(b) pertaining to prosecution's document 9016-B.

MR. LOGAN: No objection, your Honor.

THE PRESIDENT: No objection to any part of the application?

MR. LOGAN: No request for any further exceptions, except that I would like to say this, if the Court please: Most of these motions of prosecution always ask to permit the prosecutor to introduce these excerpts into evidence. I think that it should not be among evidence, but merely a motion to amend the rule, because it is up to the Tribunal at the time the document is offered in court as to whether or not it should be put in evidence.

THE PRESIDENT: Yes, this is really an application for an exception from the rule.

MR. LOGAN: That is right.

THE PRESIDENT: Yes. Well, I will treat it as such and the order will be in that form. As respects these documents, we have covered the lot of them.

(Whereupon, at 0905, the hearing was concluded.)